

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4480 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

NANODA GOVABHAI HARDASBHAI

Versus

STATE OF GUJARAT, TO BE SERVEDVED

Appearance:

MR AKSHAY H MEHTA for Petitioner
M/S PURNANAND & CO for Respondent No. 1
Mr.V.B.Gharania, ASSTT. GOVERNMENT PLEADER for
Respondent No. 2, 3

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 04/12/98

ORAL JUDGEMENT

By means of this petition, the petitioner has sought for quashing the orders dated 30th September, 1981 passed by the Assistant Collector, Dhrangadhra in Land Ceiling Revision case no. 271/80-81 and the order of the Gujarat Revenue Tribunal passed in

2. The learned counsel for the petitioner submitted that by an order dated 21.12.1980 passed in Land Ceiling case no. 81 of 1976-77, the Mamlatdar and ALT, Wadhwan, declared that the petitioner was holding 19 acres of surplus land. The Asistant Collector, exercising suo motu powers under section 37 of the Bombay Land Revenue Code, by his order dated 30th September, 1981 revised the order of Mamlatdar and ALT, Wadhwan holding that the petitioner was holding 30 acres and 37 gunthas of land as excess land. September, 1981, out of which, it is mentioned in the order that 19 acres surplus land declared by the Mamlatdar and ALT has already been taken into possession by the State. The learned counsel for the petitioner also submitted that the total holding of the petitioner includes the land of 36 acres and 31 gunthas which was purchased by the petitioner by a registerwe sale deed dated 10.1.67 and possession of that land was never handed over to the petitioner by the vendor. Hence, it cannot be included in the holding of the petitioner under the provisions of Section 215 of the Act.

3. The learned counsel for the petitioner submitted that it appears that the land of the sale deed dated 10.1.67 was also sold to another person. Hence, the petitioner was not handed over the possession therof by the vendor. However, the Tribunal erroneously presumed the petitioner as the owner of that land, the possession whereof had not been at all handed over to the petitioner. Under the provision of Section 215 of the Act, to hold land means to be lawfully in actual possession of the land as the owner or tenant as the case may be. The petitioner is not in actual possession. Hence, such land should have been excluded in calculating the ceiling limit by the authorities concerned.

4. I have also heard the learned Assistant Government Pleader Mr. Gharania for the respondent State and have perused the relevant record of the case. At this stage both the parties agree that the matter may be remanded to the Mamlatdar and ALT, Wadhwan for deciding it afresh in respect of the actual possession of the petitioner over the land of the sale deed dated 10.1.67 admeasuring 36 acres 31 gunthas.

5. Considering the facts and circumstances of the case, I think it just and proper that the petition deserves to be allowed and the matter is required to be remanded to the Mamlatdar and ALT, Wadhwan for a decision

in respect of possession of the land of the sale deed dated 10.1.67 admeasuring 36 acres 31 gunthas. At this stage, the learned counsel for the petitioner submitted that the petitioner's possession has already been protected by this Court by an order dated 20.10.82 and until the final decision by the Mamlatdar, the petitioner's possession may be protected. Hence, I pass the following order.

6. Accordingly, the petition is allowed.

The order passed by the Gujarat Revenue Tribunal in Revision Application no. TEN.B.A.1151 of 1981 and the order dated 30.9.1981 passed by the Assistant Collector, Dhrangadhra in Ceiling Revision no.271 of 1980-81 TEN.B.A.1151 1981 at Annexures "B" and "C" to the petition are hereby quashed and set aside. The matter is remanded to the Mamlatdar and ALT, Wadhwani with a direction to decide the matter afresh regarding possession of the petitioner over the land of the sale deed dated 10.1.67, on merits and in accordance with law, regarding the land admeasuring 30 acres and 37 gunthas. The Mamlatdar and ALT, Wadhwani is directed to decide the matter within three months from the date of receipt of writ of this Court and till then the petitioner's possession shall not be disturbed. Rule is made absolute accordingly with no order as to costs.

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